

No. 89-915

Supreme Court, U.S.

FILED

MAR 30 1990

JOSEPH F. SPANIOLO, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1989

STATE OF TENNESSEE,

Petitioner,

vs.

RONNIE M. CAUTHERN,

Respondent.

On Writ of Certiorari To The
Supreme Court Of Tennessee At Nashville

RESPONSE TO PETITION FOR THE
WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW
BY PETITIONER

1. Whether the Supreme Court of Tennessee impermissibly expanded the scope of *Miranda v. Arizona* in concluding that the respondent invoked his right to remain silent by merely refusing to make a truthful statement and by indicating a desire to not have his statement tape recorded?

2. Whether the alleged Fifth Amendment error was harmless beyond a reasonable doubt?

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OPINION BELOW

The Respondent adopts by reference and incorporates the language of the Petitioner as set forth in its "Opinion Below" and also adopts by reference and incorporates Appendix A and B of Petitioner.

JURISDICTION

The petitioner has stated this Court's Jurisdiction is invoked under 28 U.S.C. § 1254(1).

We submit this *is not* proper. If this Court's jurisdiction is invoked at all, it would be under 28 U.S.C. § 1257, "Jurisdiction To Review Decisions of State Courts."

There are two major routes by which cases in state courts may reach this Court – appeal and certiorari. Under either method, this Court's jurisdiction depends upon the federal character of the question or questions at issue. One must first choose between these two alternative means. The petitioner, may ask this Court to review the judgment of the Tennessee Supreme Court by selecting either § 1257(1) or § 1257(2) or § 1257(3).

The first two choices are reviewed by appeal and the third by certiorari. To proceed at this point respondent must assume petitioner would have selected the third choice, certiorari, since that is what petitioner selected under § 1254(1), erroneously.

Under § 1257(3), this Court's jurisdiction by way of certiorari to review, manifests itself in three situations: (1) where the validity of a federal treaty or statute is drawn in question; (2) where the validity of a state statute is drawn in question on the grounds of its being repugnant to federal law; and (3) where a title, right, privilege, or immunity is set-up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

The first two of the above situations related to the same types of federal issues as underlie the right to appeal to this Court under § 1257(1) and § 1257(2).

The third situation above, finds no counterpart in this Court's jurisdiction, by way of appeal. In such cases, this Court's jurisdiction can only be invoked by a petition for certiorari.

In short, §1257(3) covers the entire range of federal questions that may arise in a case in a state court. All such questions are within the certiorari jurisdiction of this Court.

Respondent further submits this case is "not final," when considering the options available to the state, upon retrial.

At this juncture, respondent respectfully asks this Court to deny the petition for writ of certiorari by objecting to petitioner's failure to properly invoke jurisdiction, and because the proceedings below are not final.

Upon reviewing the *Rules of the Supreme Court of the United States*, in particular Rule #15.4, respondent though objecting to jurisdiction, must continue to reply to the petition for writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. CONSTITUTIONAL AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval

forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; *nor shall be compelled in any criminal case to be a witness against himself*, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. CONSTITUTIONAL AMENDMENT VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and *to have the assistance of counsel for his defense*.

STATEMENT OF THE CASE

Respondent, adopts by reference and incorporates the petitioner's *Statement Of The Case*.

REASONS FOR DENYING THE WRIT

1. The Supreme Court of Tennessee, did not expand the scope of *Miranda v. Arizona*, 384 U.S. 436 (1966).

Under, *Miranda*, this Court established procedural safeguards to protect defendants under custodial interrogation.

Once adversary proceedings have begun the Sixth Amendment right to counsel is violated when the State knowingly exploits the opportunity to record statements of the accused made in the absence of counsel, even though the meeting was requested by the accused. *Miane v. Moulton*, 474 U.S. 159 (1985).

If questioning continues after warning, a heavy burden rests on the state to show a waiver was knowingly and intelligently waived. *Tague v. Louisiana*, 444 U. S. 469 (1980).

Procedural safeguards established by the Court to cut off questioning, require the authorities to immediately cease interrogating an accused, once the accused indicates in any manner, at any time prior to or during interrogation, that he does not wish to continue; *Miranda v. Arizona*, 384 U. S. 96 (1966); *Michigan v. Moseley*, 423 U.S. 96 (1975).

Law enforcement can talk with Defendant even after *Miranda* **so long as Defendant doesn't say or indicate he wants his lawyer**. Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. 384 U.S. 436.

Respondent submits the details given in the third statement and its subsequent submission to the jury were a key factor in respondent receiving the death penalty and his co-defendant Patterson receiving a life sentence.

The respondent asks this Court to consider the totality of the circumstances surrounding the entire interrogation process (Appendix B, App. 23-59). We submit that the *Miranda* decision does require the Supreme Court of Tennessee to reach the decision it did and that the State court did not expand the scope of *Miranda* beyond the rulings of this Court.

2. The alleged Fifth Amendment error was not harmless beyond a reasonable doubt.

Throughout trial the co-defendants acted in concert. They both wore ski-masks, gloves, and carried pistols. Both broke into the residence. Both participated in the murders of both victims and raped Mrs. Smith. (Appendix A, App. 8-9)

In the *Satterwhite* case, this Court ruled the admissions of testimony were not harmless, because the lower court could not say beyond a reasonable doubt that the testimony did not influence the sentencing jury, even though the other testimony would support the death sentence. The question is not whether the legally admitted evidence would support the death sentence, but whether the state has proved beyond a reasonable doubt, that the error complained of did not contribute to the verdict of death *Satterwhite v. Texas*, 486 U.S. 249 (1988); *Estelle v. Smith*, 451 U.S. 454 (1981).

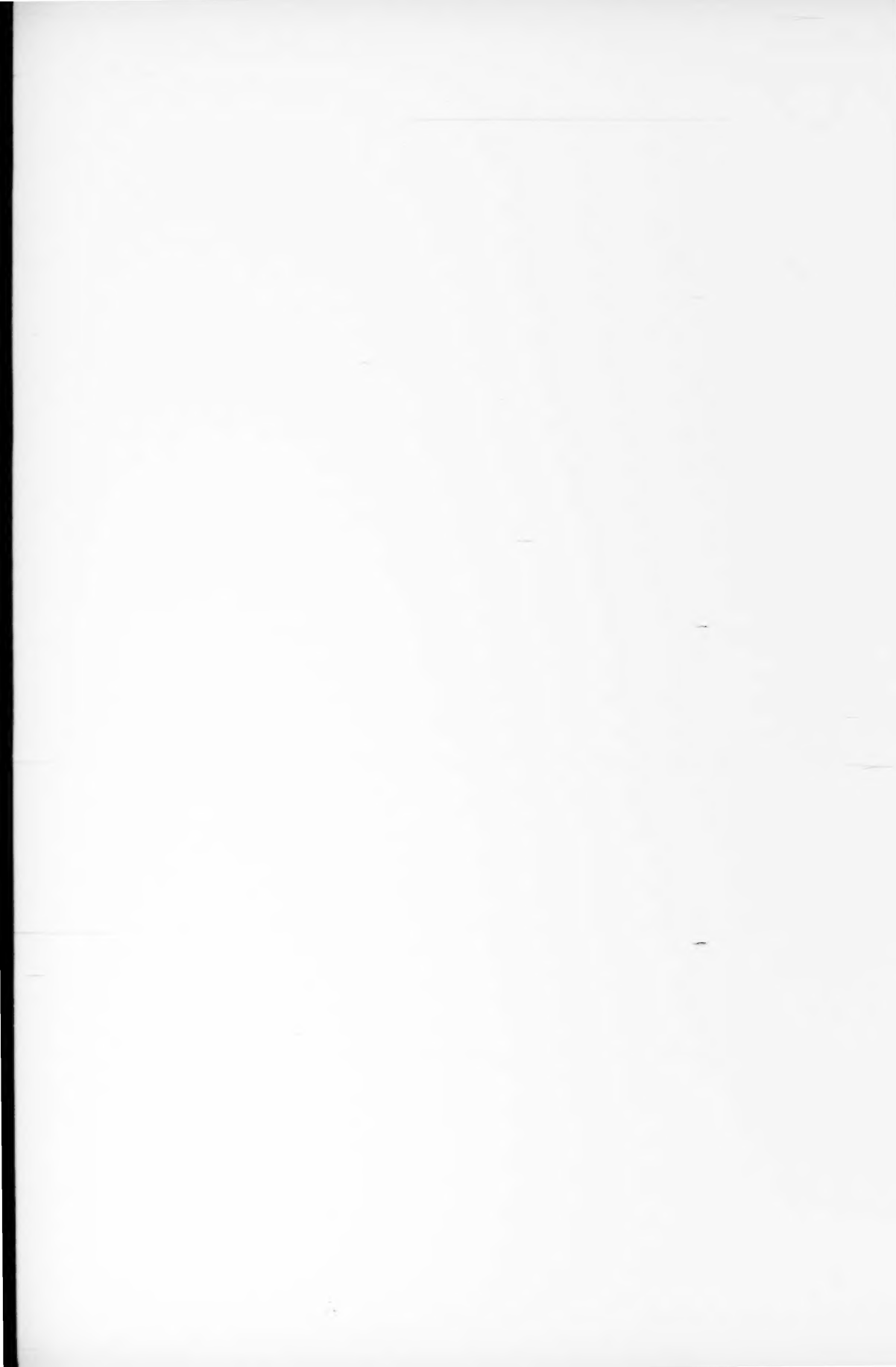
In respondent's case, the State court cannot say that — the admission of the contents of the defendant's statement recorded on the second secretly hidden tape recorder, did not have any effect on the verdict of death and that its admission was not harmless error beyond a reasonable doubt. (Appendix A, App. 12-16 and 18-20)

CONCLUSION

For the reasons stated, the respondent urges this Court to deny the writ of certiorari.

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App. 1

APPENDIX A & B

Respondent Adopts by Reference and Incorporates the
Appendices of the Petitioner.
